



# FAIRFAX COUNTY

## DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT

12000 Government Center Parkway, Suite 427

Fairfax, Virginia 22035-0013

[www.co.fairfax.va.us/dpsm](http://www.co.fairfax.va.us/dpsm)

V I R G I N I A

Telephone: (703) 324-3201 Fax: (703) 324-3228 TTY 1-800-828-1140

### Amendment No. 3

**SUBJECT:** Computers, Brand Name, Software, Peripherals, Consulting and Related Services

**CONTRACTOR**

**VENDOR CODE**

**CONTRACT NO.**

IBM Corporation  
999 Waterside Drive  
Norfolk, Virginia 23510

B130871985 03

RQ00-341360-16F

Contract RQ00-341360-16F is amended to **add** Total Web Government (TWG) Services. Enclosed is Attachment A (Website Development Capability Statement of Work), Attachment B (Standard Acceptable Use Policy for IBM e-business Services), and Attachment C (Broadband Satellite Connectivity Statement of Work). The above-mentioned attachments will have to be negotiated by each jurisdiction (customer), which would like to utilize total web government services. **Prices and rates are enclosed.** Prices will consist of a one-time fee and monthly subscription charges that will be provided by IBM to each customer based on the service selected and is subject to a separate Statement of Work.

All other terms and conditions remain the same.

Armand E. Malo  
Director/County Purchasing Agent

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**DISTRIBUTION:**

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### **Agreement for IBM Totally Web Government Service**

IBM shall provide, as described herein, the IBM Totally Web Government Service and related service offerings (collectively, the "TWG Service" or the "Services") to local government public sector entities (LGE) eligible to procure under the IBM/Fairfax County-US Communities contract RQ00-341360-16F.

IBM strives to provide high quality, professional service that is responsive to the needs of the Fairfax County-US Communities customers. This Agreement is comprised of the terms and conditions contained herein and the following attachments:

#### **Schedule A – Glossary**

- **Attachment A – Web Site Development Capability Statement of Work**
- **Attachment B – Standard Acceptable Use Policy for IBM e-business Services**

1. **Definitions.** Capitalized terms used in this Agreement shall have the meanings ascribed to them in this Agreement and in the Glossary set forth in Schedule A.

2. **Introduction.** The IBM TWG Service and other elements of the offering comprising the Services collectively form an Application Services Provider (ASP) service aimed at providing LGEs' with internet access and the ability to develop and maintain an interactive web presence. The TWG Service provides LGEs' with an opportunity to start with a basic set of services, such as Internet connectivity and a web development capability. All service components are designed to be optional and independent of each other. Additional services may be offered by IBM from time to time, and LGEs' can choose additional functionality as their needs arise. Each service offering will be described in a separate Statement of Work (SOW). The SOW will include as a minimum a description of the service being offered under the SOW, the capabilities being provided by such service, training availability and offerings, appropriate service level objectives/agreements, support to be provided, and pricing and payment terms.

#### **3. The Services.**

a. **In General; Grant of License.** IBM agrees to provide the Services in accordance with this Agreement and the Schedules, Attachments and Statements of Work to this Agreement. The initial offering of the TWG Service is described in Attachment A. IBM grants to the participating LGE a non-exclusive right to access and use the Services, and to personalize the services. For example, personalization may include the ability to incorporate the local government logo or contact information on marketing materials and the Web site creation Service's "start-here" page.

b. **Service Level Objectives/Agreements.** In providing the Services, IBM shall meet or exceed the applicable service level objectives ("SLOs") and SLAs set forth in the applicable Statement of Work. Each individual service offering will have appropriate unique Service Level Objectives/Service Level Agreements and remedies, as applicable, to be defined in each offering Statement of Work.

c. **Additional and Optional Services.** IBM may from time to time expand the Services offering by making additional, optional services and service packages available, including but not limited to

interactive add-on applications (collectively, the "Optional Services"). These Optional Services may be offered for additional fees and may be provided subject to SLAs that vary from other components of the Services. To order Optional Services or to change existing Services, IBM and the participating local government entity, as applicable, must execute a SOW covering such changed or Optional Services. Each Statement of Work shall be effective only if executed by the each entity's duly authorized representatives.

4. **Charges and Payments.** The LGE agrees to pay IBM all undisputed charges for the Services specified in each applicable SOW. Payments are due on or before thirty (30) days after the date on IBM's invoices.

5. **LGE Warranties and Covenants.**

a. **Warranties.** LGE represents and warrants that:

- i. it will comply with the IBM Acceptable Use Policy for e-business Services provided in Attachment B;
- ii. LGE is solely responsible for all Content contained on their respective Web sites; and
- iii. LGE is responsible for providing and maintaining all of their own computer equipment and software necessary to access the Services.

b. **Covenants.** LGE agrees that it will:

- i. not resell, remarket, or otherwise redistribute any portion of the Service or offer services to others for the creation of Web sites using the Service;

6. **Term and Termination.**

6.1 **Term.** This Agreement will be effective beginning on 12:01 a.m. {insert local time zone} on the day after the date of last signature to this Agreement ("Effective Date"). This Agreement will remain in effect from the Effective Date for a period of one (1) year, unless earlier terminated in accordance with the terms herein. This Agreement will automatically renew for additional one (1) year periods unless either party notifies the other in writing prior to ninety (90) days from the end of the then-current term of its intent not to renew.

6.2 **IBM Initiated Termination.** IBM may modify or discontinue any or all aspects of the Services or terminate or restrict LGE's use of the Services (in whole or in part) as follows:

- a. Immediately, for violations of the Acceptable Use Policy for e-business Services. IBM will provide the LGE violating the policy written notice of breach, specifying the breach in reasonable detail immediately after the fact.
- b. Upon thirty (30) days prior written notice, for material breach of this Agreement (other than a violation of the Acceptable Use Policy for e-business Services), provided that IBM has given LGE written notice of breach, specifying the breach in reasonable detail, and has given a reasonable opportunity (but not less than thirty (30) days) to cure (or to pursue cure of) the breach. IBM agrees to extend this period up to ninety (90) days upon request of LGE.



- c. Upon at least five (5) month's prior written notice, for convenience during the Initial Term of this Agreement, or with such notice if the Services (or a particular component thereof) are to be terminated generally and no longer offered by IBM (or its successor).

In the interest of assuring continuity of service and serving the public interest, IBM will work in good faith with LGE to resolve promptly problem(s) that may give rise to the termination and suspension rights described in (a) and (b), above. In any event, IBM shall only terminate or suspend those users, and portions of the Services that are necessary to protect against or to resolve the breach giving rise to the termination or suspension under (a) or (b), above. Termination or suspension of an LGE shall terminate or suspend rights only with respect to that LGE; the termination or suspension shall not affect other LGE's.

In the event that any of the Services has been suspended or terminated for violation of the IBM Acceptable Use Policy statement or through material breach of this Agreement, the following procedures shall apply for reinstatement:

- a. The LGE will notify IBM of its understanding that the problem causing suspension or termination has been resolved, describing the corrective measures taken.
- b. IBM will promptly verify that the problem has been resolved.
- c. Once the remedy is verified, IBM shall reinstate the suspended or terminated service within 48 hours.
- d. IBM will have the right, but not the obligation, to periodically monitor the service being used by the LGE to determine if future problems occur.

**6.3 LGE Initiated Termination.** LGE may terminate this Agreement or any severable part of this Agreement or any of the Services for any reason at any time upon thirty (30) days written notice to IBM.

**6.4 Effect of Termination or Expiration.** LGE will remain liable for the pro-rata portion of the full monthly charge for the month of termination and for the pro-rata portion of all usage-based charges through the effective date of termination. In addition, any terms of this Agreement, which by their nature extend beyond the termination or expiration of this Agreement, and as may be specified in a specific Schedule, Attachment, or Statement of Work, shall survive and remain in effect until fulfilled, and apply to and are binding upon the parties' respective successors and assignees, including Sections 4, 6.2, 6.4, 7, 8, 9 and 10.

Upon notification of any termination, IBM will promptly provide LGE with all LGE Content, data and information relating to the terminated portion of the Services or this Agreement, on mutually acceptable media, but no later than within one (1) week of termination. Services will continue to be provided from the date of notification of termination until the effective date of termination. Other termination services may be provided by IBM as mutually agreed between the parties.

**7. Disclaimer of Warranties.** THE SERVICE, ALL APPLICATIONS, AND ANY TECHNICAL ASSISTANCE ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, QUALITY, SECURITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. LGE ASSUMES ALL RISK OF USING



THE SERVICE AND APPLICATIONS IN ANY ACTIVITIES WHERE DAMAGE OR INJURY TO PERSONS, PROPERTY, OR BUSINESS MAY RESULT IF AN ERROR OR INTERRUPTION OCCURS. NO WARRANTY IS GIVEN THAT THE SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED. IBM DOES NOT WARRANT THAT THE SECURITY PROCEDURES WILL PREVENT THE LOSS OF, ALTERATION OF, OR IMPROPER ACCESS TO LGE DATA. IBM IS NOT RESPONSIBLE FOR INVALID DESTINATIONS AND TRANSMISSION ERRORS NOT DUE TO THE FAULT OF IBM. LGE IS RESPONSIBLE FOR THE RESULTS OBTAINED FROM THEIR USE OF THE SERVICES, PROVIDED THAT THE SERVICES OPERATE IN ACCORDANCE WITH THE RESPECTIVE STATEMENTS OF WORK AND, AS APPLICABLE, THE RESPECTIVE DOCUMENTATION. EXCEPT AS OTHERWISE PROVIDED, IBM, INCLUDING ITS LICENSORS AND SUBCONTRACTORS, DISCLAIM ANY LIABILITY OR RESPONSIBILITY ARISING FROM ANY CLAIM THAT LGE'S ACCESS TO, OR USE OF THE SERVICES, APPLICATIONS OR TECHNICAL ASSISTANCE IBM OR OTHER SERVICE PROVIDERS MAY PROVIDE INFRINGE ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

**8. Limitation of Liability.** EXCEPT FOR INDEMNIFICATION FOR THIRD PARTY CLAIMS UNDER SECTION 9, EACH PARTY'S SOLE RIGHT AND EXCLUSIVE REMEDY AND THE OTHER PARTY'S EXCLUSIVE LIABILITY IN THE EVENT OF ANY BREACH OF THIS AGREEMENT IS TERMINATION OF THIS AGREEMENT AS PROVIDED IN SECTION 6 AND RECOVERY OF ITS DIRECT DAMAGES UP TO A CUMULATIVE MAXIMUM OF THE AMOUNT LGE PAID IBM FOR THE PREVIOUS TWELVE MONTHS OF SERVICES HEREUNDER.

EXCEPT FOR INDEMNIFICATION FOR THIRD PARTY CLAIMS UNDER SECTION 9, IN NO EVENT SHALL EITHER PARTY, ITS SUBSIDIARIES, AFFILIATES, CONTRACTORS, SERVICE PROVIDERS, LICENSORS, EMPLOYEES OR AGENTS LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR:

- a. ANY SPECIAL, INDIRECT, CONSEQUENTIAL (INCLUDING LOST PROFITS OR SAVINGS) OR INCIDENTAL DAMAGES ARISING FROM THE USE OF, OR THE INABILITY TO USE, THE SERVICE OR IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT; OR
- b. THE OTHER PARTY'S FAILURE TO PERFORM THE OTHER PARTY'S RESPONSIBILITIES IN CONNECTION WITH THIS AGREEMENT, OR ARISING FROM ANY CAUSE BEYOND ITS OWN CONTROL;

EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9. Indemnification.**

- a. LGE will defend IBM and its subsidiaries and affiliates and its and their employees, officers, and directors against any third party claim (and pay all damages that a court of competent jurisdiction finally awards or which LGE agrees in any final settlement, to such third party claim, and any reasonable attorneys' fees and expenses of defense incurred by IBM):
  1. that LGE Content or LGE's use of the Services violates LGE's obligations in this Agreement; and/or
  2. that is brought by a services user and is related, directly or indirectly, to the performance of the Services in accordance with this Agreement;

provided, that, IBM:

- i. promptly notifies LGE in writing of the claim; and
  - ii. allows LGE to control, and cooperates with LGE in, the defense and any related settlement negotiations. Notwithstanding the foregoing, LGE is not responsible for third party claims based on:
    - w. anything IBM provides which is incorporated into or used with the LGE Content;
    - x. IBM's or any third party's modification of the LGE Content;
    - y. the combination, operation, or use of the LGE Content with any product, data, or apparatus provided by IBM; or
    - z. non-LGE hardware, software, or data, including those that may be in the components.
- b. If a third party claims that IBM materials or IBM components provided by IBM infringe that party's patent or copyright, IBM will defend LGE and its employees, officers, and directors against that claim at IBM's expense and pay all costs, damages and reasonable attorney's fees that a court of competent jurisdiction finally awards in connection with that claim (or which IBM agrees in any final settlement), provided that LGE:
- i. promptly notifies IBM in writing of the claim; and
  - ii. allows IBM to control, and cooperates with IBM in, the defense and any related settlement negotiations. If such a claim is made or appears likely to be made, LGE agrees to permit IBM to enable LGE to continue to use the materials or components, or to modify them, or replace them with non-infringing materials or components that are at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, LGE agrees to return the materials or components (if in LGE's possession) to IBM on IBM's written request. IBM will give LGE a credit equal to the amount LGE paid IBM for the applicable components up to a maximum of twelve (12) months of applicable charges. This is IBM's entire obligation with regard to any claim of infringement. Notwithstanding the foregoing, IBM is not responsible for third party claims based on:
    - w. anything LGE provides which is incorporated into the materials;
    - x. LGE's modification of the materials;
    - y. the combination, operation, or use of the materials with any product, data, or apparatus that IBM did not provide; or
    - z. non-IBM hardware, software, or data, including those that may be in the components.
- c. For indemnification under this Section 9, the indemnified party will promptly notify the indemnifying party in writing of the claim; and allow the indemnifying party to control, and will cooperate with the indemnifying party in the defense and any related settlement negotiations.



#### 10. Miscellaneous.

- a. Subject to the following, all information exchanged between the parties under this Agreement is non-confidential. If either or both parties require the exchange of confidential information, such information will be exchanged under the terms and conditions of a separate written confidentiality agreement.

All LGE IP shall remain the sole and exclusive property of LGE or the applicable owner; no transfer of ownership to IBM shall occur by virtue of this Agreement or any performance of services by IBM. Subject to the terms and conditions of this Agreement, LGE grants to IBM a nonexclusive license to use the LGE IP internally, solely to the extent necessary to enable IBM's performance of this Agreement.

- b. Changes to this Agreement shall only be made by mutual, written agreement between the parties. Notwithstanding the foregoing, IBM, in its sole discretion, may make reasonable changes to the Services, including withdrawing all or portions of the Services, upon thirty (30) days' notice to LGE, to the extent necessary to comply with changes in applicable law.
- c. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this Agreement shall in no way be affected or impaired thereby, so long as the remaining provisions of this Agreement still express the original intent of the parties. If the original intent of the parties cannot be preserved, this Agreement shall either be renegotiated in good faith so as to give effect to the parties' intent consistent with applicable law, or terminated upon mutual agreement.
- d. The substantive laws of the [INSERT STATE IN WHICH LGE IS LOCATED] shall govern this Agreement, without regard to conflict of laws provisions.
- e. LGE and IBM are independent contractors for all purposes of this Agreement, and this Agreement is non-exclusive. IBM and LGE are not legal representatives or legal agents of the other party. IBM and LGE are not legally partners of each other (for example, neither is responsible for debts incurred by the other), and neither is an employee or franchise of the other, nor does this Agreement create a joint venture between IBM and LGE.
- f. IBM reserves the right to provide the TWG Services to any government entity under another contract vehicle.
- g. Each party is responsible for its own expenses regarding fulfillment of its responsibilities and obligations under the terms of this Agreement.
- h. Neither party will assume or create any obligations on behalf of the other.
- i. Failure by either party to insist on strict performance or to exercise a right when entitled does not prevent either party from doing so at a later time, either in relation to that default or any subsequent one.
- j. Neither party is responsible for failure to fulfill obligations due to force majeure causes beyond the reasonable control of either party.



- k. Neither party may assign its rights under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.
- l. IBM may periodically review LGE's compliance with this Agreement. LGE agrees to provide IBM with relevant records on request. IBM may reproduce and retain copies of these records solely for its internal use in reviewing such compliance. IBM, or an independent auditor, may conduct a review of LGE's compliance with this Agreement on LGE's premises during LGE's normal business hours.
- m. This Agreement, including its Schedules, Attachments, and SOWs, is collectively the sole agreement between the parties related to the subject matter herein, replacing all prior or contemporaneous communications and agreements between the parties related to subject matter herein.
- n. Except as may be required by law or as may be required by IBM to perform Services, neither party may disclose to any third party the terms and conditions of this Agreement, without prior written consent of the other party.
- o. Neither party will bring a legal action related to this Agreement more than two years after the cause of action accrued. The parties waive any right to a jury trial in any proceeding arising out of or related to this Agreement.
- p. LGE agrees that IBM may store and internally use LGE's contact information, including names, phone numbers and e-mail addresses, anywhere IBM does business. IBM will process such information solely as part of the business relationship between LGE and IBM under this Agreement, and IBM reserves the right to provide such information to its contractors, subsidiaries, business partners and assignees solely for internal use to the extent necessary to perform obligations under this Agreement on behalf of IBM.
- q. LGE is solely responsible for complying with all applicable data protection laws governing LGE Content, including determining whether the Services specified herein are adequate to ensure that LGE is in compliance with any such laws.
- r. Services will not violate any applicable laws, regulations, or conventions.
- s. IBM will pass-through to LGE and the Municipalities any warranties and indemnities that an original equipment manufacturer ("OEM") or other third party manufacturer of hardware or software developer/licensor generally provides to its customers or to IBM with respect to use of the hardware/software in connection with the Services.

Accepted and Agreed to:

[LGE]

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted and Agreed to:

International Business Machines Corporation

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

**Glossary**

**"Agreement"** means the legal agreement that specifies the services offered as Totally Web Government Services to the LGEs.

**"Documentation"** means, as applicable, the user guides, technical specifications, and other documentation, in any form, describing the features, functionality and/or use of any of the Services. The Documentation is incorporated into this Agreement by this reference.

**"LGE"** means any city, town, village, or other governmental entity or agency that is eligible to utilize the Fairfax County-US Communities contract RQ00-341360-16F.

**"Statement of Work" or "SOW"** means a description of a new Service offering that shall include, at a minimum, a description of the covered services, pricing for such services, and SLA/SLO commitments. Conflicts between the terms and conditions of this Agreement and the SOWs shall be resolved as follows: (i) with respect to the description of the covered services, pricing and payment for such services, SLO objectives or SLA commitments, and technical requirements, the express terms of the SOW shall prevail with respect to that Service; and (ii) with respect to additional terms and conditions in the SOW that vary from the terms and conditions set forth in this Agreement, the terms and conditions of this Agreement shall prevail unless specifically agreed otherwise in writing. Upon execution: (i) each SOW shall be deemed incorporated into this Agreement and shall be attached to this Agreement as sequentially numbered Attachments (e.g., Attachment D, E, F, etc.); and (ii) the changed services and/or Optional Services described in the SOW shall be deemed to be part of the Services for all purposes of this Agreement.

**"Service Level Agreements" or "SLAs"** means the various minimum service levels and other performance criteria that may be applicable for the Services or a part thereof.

**"LGE Content"** means, collectively, content, information, software and data that LGE, or its or their agents, contractors, or users provide, including, but not limited to, any hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets or servlets that LGE or its or their agents, contractors, or users create, license, install, upload or transfer in the web hosting environment (the "Web Hosting Environment") or using the Services.

**"LGE IP"** means the LGE Content, and other content, data and information supplied to IBM under this Agreement or in connection with the Services, and all user, usage and other information collected by IBM in connection with the Services or this Agreement. LGE IP does not include any IBM or third party OEM content provided by IBM.

Web Site Development Capability Statement of Work<sup>1</sup>**1.0 Service Overview.**

The TWG Service is a comprehensive set of resources aimed at providing small and medium local government entities with the ability to develop and maintain an interactive web presence. The base application is the Matrix Web Site Development Tool, which provides a web site development capability. This Matrix application is an easy to use tool that enables a non-technical Content Administrator to develop and maintain an interactive web site presence for the LGE. The Matrix tool includes multiple local government "templates" to easily create pages for city departments or services, text and image editors, and a variety of page styles. A training CD ROM and training manual provides the Content Administrator with step-by-step instructions on how to use the tool. The TWG Services are also described on-line at <http://www.totalwebgov.com>.

The web site development capability of the Services includes:

- a. providing LGE with the URL, a User ID, and a password to access the Matrix tool in an administrative capacity to develop and maintain an interactive web presence;
- b. hosting the web sites at an IBM Universal Server Farm (USF);
- c. Technical help desk support and problem resolution in accordance with Section 3 herein;
- d. providing a detailed invoice to the LGE using the TWG Service listing their individual costs; and
- e. providing one training CD ROM to the LGE.

IBM will operate, maintain and support the IBM components by using commercially reasonable efforts to maintain the hardware and software that IBM provides. IBM will use commercially reasonable efforts to maintain software in commercially supported version and, at IBM's discretion, will obtain and install new releases or fixes to aid in problem resolution. The term "Content Administrator" as used in this SOW, means an employee or contractor of the LGE who is authorized by the LGE to develop and maintain content on the LGE's web site using the assigned user id.

**1.1 Web Site Development Capability.** IBM realizes that small and medium government entities often do not have the Information Technology staff required to develop and maintain a robust, interactive web presence that would support the needs of the local on-line citizenry. With this in mind, IBM developed the Web Site Development Capability component of TWG Service as a simple to use, complete offering with a ready to use LGE web site template as the foundation.

The web site development tool consists of the following basic features, which are described in further detail in the Documentation, which shall be provided by IBM to LGE:

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<sup>1</sup> Terms not otherwise defined in this Statement of Work shall have the meanings set forth in the Agreement.



- a. A LGE web site template;
- b. A site development wizard for developing LGE web sites;
- c. A minimum of ten (10) web site styles that can be chosen and applied to a web site;
- d. English language capability with the ability to change the font, style, size and color of typed materials;
- e. An image library;
- f. An access controlled, single general "Start Here" page that will enable LGE's to input their User Identification and password to access the development tool. LGE may request IBM develop a unique LGE-specific "Start Here" page. Any such work will be performed on a time and materials basis under additional terms and conditions as approved by LGE ;
- g. A site visitor counter that can be customized by a LGE;
- h. A guest book that can be customized by a LGE;
- i. A poll development and analysis capability;
- j. A search capability for the web site;
- k. A training CD for the web site development tool; and
- l. The ability to submit the web site URL to over 200 search engines.

**1.2 Training.** IBM will provide at no additional cost a training CD-ROM and training manual for the Web Site Development Capability tool. LGE shall have the right to copy and adapt training materials for its further use. LGE will be responsible for the training of LGEs' personnel on the web site development tool. IBM will provide to the LGE access to one training web site at no additional cost, using a user id to be provided by IBM. This web site will be for the use of the LGE in training and marketing of the Services. All costs associated with training LGE personnel will be the responsibility of LGE.

### **1.3 Web Site Development Software Tool.**

IBM has selected the Matrix product for use as a key component of the web development capabilities of the Services. Matrix is made available for use with the LGE Web sites and the Services. LGE shall have no ownership rights in the Matrix product other than the rights of access and use that IBM grants to LGE hereunder.

Website Pros, a third party licensor, will not be responsible to LGE for special, incidental, or consequential damages regarding Services. Website Pros has represented that it owns or has the right to license the Matrix product including its components (such as text, graphics, and any images provided by Website Pros) which may be used on the LGE Web sites and LGE shall have no rights in the Matrix product other than the rights of access which IBM may grant to LGE hereunder. Website Pros makes no warranties to LGE regarding Services.

### **1.4 Corbis Images.**

- a. Corbis Corporation ("Corbis") is a third party licensor selected by IBM. Corbis Images is an interactive add-on application provided by IBM for use with the Services. LGE must only use the Corbis Images for themselves and shall not sell, rent, loan, give, sublicense (except as otherwise allowed in this Agreement) or otherwise transfer the Corbis Images to unaffiliated third parties.
- b. LGE must indemnify and hold Corbis harmless against any damages or liability arising from any use by them of the Corbis Images not allowed under the terms of this section.

- c. LGE has only a non-exclusive, non-transferable license to: a) reproduce, modify and create derivative works of any web page templates provided as part of the Matrix Web site builder that contain Corbis Images; b) use, publicly display, and publicly perform the original Corbis Image or modified Corbis Image as part of that web site page template; and/or c) add Corbis Images to a web site page template or replace Corbis Images that already appear there with other Corbis Images.
- d. The rights granted to LGE with regard to the Corbis Images are personal, in that LGE can only produce a work for themselves or for their direct employers who are actually the end users of the work. LGE must take all reasonable steps to prevent third parties from duplicating or distributing Corbis Images.
- e. LGE must not use Corbis Images for pornographic, defamatory or otherwise unlawful uses.
- f. All right, title and interest in and to the Corbis Images, including without limitation the copyrights in the Corbis Images belong to Corbis, and/or its licensors, and no title to the Corbis Images or any portion of them shall pass to LGE.
- g. Neither Corbis nor any of their directors, officers, employers, partners, licensors, or agents shall be liable for any damages, whether direct, indirect, consequential, or incidental, arising out of the use of, or the inability to use, a Corbis Image.

**1.5 User Ids, Passwords and URLs.** IBM, in providing the Services, shall implement and maintain security and access controls limiting access to authorized users of the LGEs.

- a. Access and use of the Services will require a user id ("User ID") and password ("Password"). IBM shall implement User IDs and Passwords to enable access to the Services. LGE will be responsible for its own security of the Passwords and User IDs that are issued to it; however, IBM will be responsible for and will maintain the security of User IDs and Passwords stored or used by IBM in connection with the Services, and shall also be responsible for maintaining the security and integrity of its own systems.
- b. IBM shall own or have sufficient rights under license for all User IDs, Uniform Resource Locators ("URLs") and domain names provided by IBM; however, as between the parties, LGE will own any domain names and URLs that IBM procures or provides at the request of the LGE or that the LGE owns independently of this Agreement. Also, as between the parties, LGE will own any User IDs and Passwords that are set by it. Except as otherwise provided in this Agreement or agreed by the parties, nothing in this Agreement may be construed to convey to LGE any interest or title in the User IDs, URLs or domain names provided by IBM to LGE under this Agreement.
- c. IBM reserves the right to suspend, terminate or modify, for any reason, IBM-provided URL or domain names used with the service. In the event that IBM changes a LGE URL, IBM will provide automated rerouting to the new URL to visitors attempting to access the web site via the changed URL.

**2.0 Hosting Services.** IBM will use its Universal Server Farm (USF) in St. Louis, Missouri to support the hosting of the web sites and web site development tool. The USF is a 1,000,000 square foot secure facility with 138,000 square feet of raised computer floor space. Access to this facility is controlled by Security Guards with electronic badge equipment to enable personnel to enter the facility and video camera monitoring and recording. Power to the facility is provided by two different power substations eight miles apart so that if one substation were to go down, the other would be able to supply power. Further backup power is provided by four UPS systems with battery backup and six two megawatt diesel



generators. Redundant Internet communication is provided by AT&T, MCI, and Southwest Bell Telephone. These communication providers are responsible for the multiple and redundant DS3 connectors that provide Internet communications into and out of the facility. Each DS3 provides 45.5 megabyte per second communications link capability. The USF uses multiple, high availability Nokia firewalls for security, along with ASERT, IBM ERS-CERT, and Haxor intrusion detection systems.

**2.1 Hosting Services Scope.** IBM shall host, operate, maintain and support the Services and the hosting infrastructure necessary to provide and maintain the Web Site Development Capability component of the TWG Services. The maximum web site storage size for each LGE web site under this Agreement will be 100MB. The service level availability objective for the network and hardware is 99.4%. IBM will track and analyze Server availability and make availability improvements as deemed necessary by IBM to meet or exceed its service level objectives. Further, IBM will be proactive in monitoring, detecting, and correcting potential problems that may adversely affect the capability to achieve the 99.4% service level objective. IBM agrees to use technology that is reasonably current with existing market standards in providing and hosting this Service. IBM will conduct routine back-up procedures so as not to adversely affect the Service.

**2.2 Firewall Services.** IBM hosting will use reasonable efforts to maintain the security and integrity of the Services, including by:

- a. Providing a secured facility with security firewalls;
- b. Implementing configuration changes on the firewall, as deemed necessary by IBM;
- c. Testing firewall settings; and
- d. Operating and maintain the firewall.

**2.3 Security Management.** IBM will:

- a. Provide access controls to the Web Hosting Environment to IBM-designated personnel only;
- b. Monitor the Web Hosting Environment for selected types of unauthorized access;
- c. Use reasonable efforts to provide and maintain, through the change management process, virus and malicious software avoidance, detection, and elimination software for the base service;
- d. Conduct reviews of selected security features within the Web Hosting Environment.

**2.4 Server Administration and Operations.** IBM will:

- a. Monitor, detect, and correct problems with servers being used to support this TWG Service;
- b. Schedule change activities with the goal of minimizing interruptions to the Services, and
- c. Maintain information of planned and ongoing changes on the TWG Home Page, [www.totalwebgov.com](http://www.totalwebgov.com).

**2.5 Internet Connectivity.** IBM will:

- a. Provide each web site with 175 MB/day of Internet Access Bandwidth. IBM will monitor the bandwidth rates of each site. Additional charges as specified in Section 4.0 of this Agreement, will be assessed for additional usage;
- b. Configure the switches and Virtual Local Area Networks for allocated Internet connectivity;
- c. Define firewall packet filtering rules;



- d. Perform occasional security scans of the firewall Servers (Layer 1); and
- e. Monitor and support TWG internet connectivity.

**2.6 Hosting Service Level Objectives.** IBM has established the following performance service level objectives with respect to the Web Site Development Capability and related portions of the TWG Service (the "Service Level Objectives" or "SLOs"). IBM will strive to attain such SLOs; provided, however, IBM's failure to do so will not constitute a breach of this Agreement or otherwise provide any additional rights to LGE hereunder.

**2.6.1 Hosting Environment.** IBM's Service Level Objective for the web hosting environment is less than eight (8) hours of Outage per calendar month per LGE.

**2.6.2 Periods of Maintenance.**

- a. IBM will strive to make the web hosting environment available for access by LGE 24 hours a day, 7 days a week, except for scheduled maintenance.
- b. IBM reserves the right to interrupt access to the web hosting environment if necessary to perform emergency maintenance.

**2.6.3 Exclusions.** Outages caused by any of the following will be excluded for purposes of determining SLO performance:

- a. periods of scheduled or emergency maintenance activities or a scheduled outage;
- b. problems with Content, or LGE's programming errors;
- c. problems caused by systems administration, commands, or file transfers performed by LGE's representatives;
- d. work performed by IBM at LGE's request;
- e. interruptions in third party networks that prevent users of the Internet from accessing LGE's site;
- f. other activities LGE directs, denial of service attacks, natural disasters, changes resulting from government, political, or other regulatory actions or court orders, strikes or labor disputes, acts of civil disobedience, acts of war, acts against parties (including carriers and IBM's other vendors), and other force majeure events;
- g. lack of availability or untimely response by LGE to incidents that require LGE's participation for problem source identification and/or resolution; or
- h. LGE's breach of its obligations under this Agreement.

**3.0 Support Services.**

**3.1 Help Desk.**

IBM will provide Help Desk functionality associated with the service offering provided under this SOW. IBM will provide to LGE's, at the same time they receive their User ID and password, the telephone number to the IBM Help Desk. IBM Help Desk support will be available Monday through Friday, 8:00am to 5:00pm Central Time with the exception of federal holidays. The Help Desk support to be provided by IBM includes the following:

- a. Receive initial calls from Content Administrators.

Open a Call Record for each call. The Content Administrator will be assigned a Call Record number. All subsequent communications regarding the initial call will need to reference the Call Number. IBM will document the problem and actions taken on a problem on the call record until the problem is resolved and retain those records for a period of one (1) year.

- b. Perform analysis of the problem in an attempt to identify the cause and a solution.
- c. Implement a solution to the problem or work around if necessary and available.
- d. Contact other support groups or organizations, as required, and coordinate work to promptly, diligently, and efficiently resolve the problem with a minimum of disruption or interruption of services.

**3.1.1 Problem Severity.** The IBM Help Desk will respond to problems in accordance with the severity code assigned to the problem by the IBM Help Desk and escalate problems as appropriate. The severity codes are as follows:

1. Severity 1 - Major impact. The product, service or network is not usable. It is IBM's SLO that severity 1 problems are responded to and updated within two (2) hours and escalated as appropriate.
2. Severity 2 - Significant impact. Important function or service is not available. It is IBM's SLO that severity 2 problems are responded to and updated within four (4) hours and escalated as appropriate.
3. Severity 3 - minor impact. The product, service or network is not seriously affected. It is IBM's SLO that severity 3 problems are responded to and updated within one (1) business day and escalated as appropriate.
4. Severity 4 - no impact. Short coming, dissatisfaction, or question. It is IBM's SLO that severity 4 problems are responded to and updated within two (2) business days

**3.1.2 Service Response Time Measurement.** The IBM Help Desk call records will reflect the date and time the IBM Help Desk received notification from LGE of a problem and the date and time at which IBM initially responded back to LGE regarding the problem and will be the only source for measuring Service Response Time. As part of its obligations under this Agreement, IBM will provide the following Help Desk services throughout the duration of this Agreement at no additional cost:

1. Monitor the Web Hosting Environment for any alert conditions.
2. Attempt to resolve certain problems or questions on the first call, such as:
  - a. Reset passwords for LGE Technical Support Team members;
  - b. Start and stop services; and
  - c. Troubleshoot Telnet/FTP connectivity problems.
3. Direct calls, as appropriate, to an IBM or development vendor technical specialist, and coordinate IBM's communications and responses.
4. Respond appropriately and timely, and dedicate the necessary resources to resolve problems based on LGE's assignment of a severity code to the problem as follows, and prioritize calls in accordance with such assignment; however, should the LGE seek to reasonably modify such assignment, IBM will accommodate such request.



IBM shall also be fully responsible for escalating and using its reasonable efforts to promptly resolve any problems that may arise with respect to any third party products provided or made available by IBM. This may include, if necessary or appropriate, replacing products having errors or defects that are not satisfactorily resolved in a timely manner with suitable, functionally equivalent replacements.

**3.2 Registration and Invoicing.** IBM will provide registration and invoicing for LGE's that sign up for this offering of the TWG Service. The procedures to be followed for registration and invoicing are generally described below.

**3.2.1 Registration.** The following will occur for registration:

- a. An LGE requesting this Service will contact the IBM Totally Web Government Program Office either via completing a registration form on the TWG web site ([www.totalwebgov.com](http://www.totalwebgov.com)) or by calling the TWG Help Desk and requesting services be initiated. The LGE will need to provide the information below:
  1. the Content Administrator's name;
  2. Internet address;
  3. mailing address;
  4. telephone number; and
  5. effective date it would like service to begin.
- b. If approved, the LGE will provide the information to IBM via e-mail.
- c. IBM will then, in turn, e-mail the URL to the Matrix start page, a User ID, and a password to the Content Administrator within two (2) business days.

**3.2.2 Invoicing.** IBM will provide to the LGE a monthly invoice. Each invoice will include as a minimum a listing of each service the LGE is receiving, the effective date of service for each service, the storage size of the LGE's web site as of the month being invoiced to enable the LGE to track their storage rate, the amount being invoiced for the LGE, and payment mailing instructions.

**3.3 Reporting.** IBM will provide reporting to the LGE on a monthly basis. The report will be provided in an electronic format to the LGE Project Manager assigned to this Service and the Content Administrator. The report will include, as a minimum, an accounting for any down time that occurred during the previous month, a summary of significant or continually repeated Help Desk call records and the actions taken to correct the problem, responses to questions most frequently asked of the Help Desk, and any suggestions/advice for Municipalities to further enhance their web sites.

**4.0 Pricing and Payments.** LGE agrees to pay IBM undisputed charges as specified herein.

#### **4.1 Services Charges**

LGE will pay IBM a one-time setup charge and a monthly service fee for the Services as set forth in table B-1. The Monthly service fee will be prorated for any partial month. The pricing listed in Table B-1 are for calendar years beginning January 1 and ending on December 31 of the year indicated.

| Services  | 2002<br>Calendar Year | 2003<br>Calendar Year |  |  |
|---|-----------------------|-----------------------|--|--|
| One-time Subscription Fee                             | \$295                 | \$315                 |  |  |
| Monthly service fee, per LGE, for up to 100MB storage | \$55                  | 57                    |  |  |
| Additional Technical Assistance Rates                 | \$250/hr              | \$265/hr              |  |  |



**Table B-1**

Each individual web site will initially be provided 100MB of storage space for the basic offering price. IBM will monitor the storage requirements for each site. An additional charge of not more than \$0.15 (15 cents) per MB in 10 MB increments for all storage above 100MB will be assessed monthly; these additional charges shall be calculated based on current market rates, and may decrease over time. If there are material changes in market rates, LGE shall have the right to renegotiate its current rates so that it is receiving rates competitive with the industry. For sizing purposes, a survey of Pilot Web Sites indicates that one web page is equivalent to approximately 100k of storage space. Therefore, 100MB of storage would include approximately 1,000 web pages.

For the basic offering price (i.e., without additional Interactive add-on applications or Optional Services not referenced in this Agreement initially, which additional applications and Optional Services shall be priced separately under Service Order(s) covering each such application), each web site will also be allotted a bandwidth of 175 MB/day. IBM will monitor the bandwidth rates of each site. An additional charge of not more than \$0.20 (20 cents) per MB in 10MB increments for all bandwidth traffic above 175MB/day will be assessed monthly; these additional charges shall be calculated based on current market rates, and may decrease over time. If there are material changes in market rates, LGE shall have the right to renegotiate its current rates so that it is receiving rates competitive with the industry. For sizing purposes, 175MB bandwidth is approximately 3,500 page views or 175 users viewing 20 pages each in one day.

**4.2 Additional Technical Assistance Charges.** IBM may provide technical assistance not otherwise specified under this Agreement ("Additional Technical Assistance") at LGE's request. Such assistance may include, for example, developing LGE-specific start here page, installing additional software LGE provides, recovery of files deleted or corrupted through user error, and other general assistance. LGE will pay IBM for Additional Technical Assistance upon completion of such assistance in accordance with the rates ("Additional Technical Assistance Rates") set forth in table B-1 above. Additional Technical Assistance will be based on time and materials, charged in half-hour increments with a half-hour minimum charge and will be subject to the terms and conditions of this Agreement.

All requests for additional technical assistance must be submitted by the LGE Project Manager to the IBM Project Manager and agreed upon in advance. Estimates for all work, fees and expenses to be billed on a time and materials basis or otherwise will be provided by the IBM Project Manager to the LGE Project Manager in advance of and prior to the commencement of any such work or provisions of any such materials. Nothing in this Agreement, however, shall in any way restrict LGE from using any third party hosting service provider, or any third party contractor to provide any technical support or assistance. IBM will cooperate fully with LGE to enable such third parties to provide such assistance.

**4.3 Reinstatement Charge.** If LGE informs IBM that LGE wishes IBM to reinstate Services under this SOW within 30 days of termination of Services, LGE shall pay a reinstatement fee equivalent to the fee for one (1) month of Services under this SOW.

**4.4 Financial Assumptions:**

- a. All charges are in United States dollars.
- b. Billing to LGE will begin on the day that a User Identification and password is provided to the LGE.
- c. All periodic charges will be computed on a calendar month basis and will be prorated for any partial month, unless this Agreement expressly states otherwise.

- d. LGE is responsible for any applicable federal, state, and local taxes or provide an exemption.

**Accepted and Agreed to:**

[LGE]

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Accepted and Agreed to:**

**International Business Machines Corporation**

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT B**

**Acceptable Use Policy for IBM e-business Services**

The Internet is an evolving medium for both commercial and social interaction. It creates exciting opportunities and related obligations. This Acceptable Use Policy ("Policy") defines activities and content pertaining to IBM e-business services that are prohibited. The examples listed in this Policy are not exhaustive.

The current version of this Policy can be found at [www.ibm.com/services/aup.html](http://www.ibm.com/services/aup.html). Questions about this Policy (e.g., whether any contemplated use is permitted) and reports of violations of this Policy should be directed to the IBM Project Manager.

Prohibited uses include using the service or permitting others to use the service in a manner that, in IBM's reasonable judgment, is a use of the service:

1. to violate any law of any applicable jurisdiction, including, without limitation, laws governing advertising, alcohol, antitrust, child protection, drugs, encryption, exportation, food, financial services, firearms, gambling, importation, information systems, intellectual property, obscenity, privacy, securities, telecommunications and tobacco;
2. to commit a tortious or otherwise wrongful act, including, without limitation, the posting or communication of libelous, defamatory, scandalous, threatening, harassing, or private information without the permission of the person(s) involved, or posting content that is likely to cause emotional distress, whether through content, frequency, or size;
3. to engage in or to facilitate gambling activities;
4. to post or send any content that is obscene, pornographic, lewd, lascivious, or excessively violent;
5. to offer, solicit, sell, buy, rent, or license any goods, products, services, or information in, from, or to any location in which such activity is unlawful;
6. to advocate, promote, or otherwise encourage violence against any government, organization, group, individual or property, or to provide instruction, information, or assistance in causing or carrying out such violence;



7. to post, send, display, distribute, or execute any content, including, without limitation, text, graphics, images, music, recordings, computer programs, links, frames, and "meta tags," that violates any copyright, right of publicity, patent, trademark, service mark, trade name, mask work, trade secret or other intellectual property right of others;
8. to delete or alter author attributions, copyright notices, or trademark notices, unless expressly permitted in writing by the owner;
9. to violate the terms of applicable software licensing agreements;
10. to obtain or attempt to obtain unauthorized access, such as attempting to circumvent or circumventing any authentication or other security feature of any system, network, or account. This includes accessing data not intended for the user, logging into a server or account the user is not authorized to access, or probing the security of any system, network, or account;
11. to interfere or attempt to interfere with service to any user, host, or network by use of any program, script, command, or otherwise. This includes "denial of service" attacks, "flooding" of networks, deliberate attempts to overload a service or to burden excessively a service's resources, and attempts to "crash" a host;
12. to introduce viruses, worms, harmful code and/or Trojan horses;
13. to attempt to circumvent the approval process for posting to a moderated newsgroup or bulletin board or to attempt to evade spam filters;
14. to cancel or supersede posts other than your own, with the exception of official newsgroup or bulletin board moderators performing their duties;
15. to send or post unsolicited messages or e-mail, whether commercial or not, a) to any recipients who have requested that messages not be sent to them, or b) to a large number of recipients, including users, newsgroups, or bulletin boards, at one time;
16. to send or post a message whose subject or content is unrelated to the subject matter of the newsgroup or bulletin board to which it is posted;
17. to send or post a message or e-mail with deceptive, absent, or forged header or sender identification information;
18. to propagate chain letters and pyramid schemes, whether or not the recipient wishes to receive such mailings;
19. to use Internet Relay Chat "bots";
20. to hold IBM, its affiliates, officers, employees and/or shareholders up to public scorn or ridicule; and/or
21. to resell IBM's services, in whole or in part, to any entity or individual, without IBM's prior written consent, or to misrepresent your relationship with IBM.



# Broadband Satellite Connectivity

## Statement of Work

### U. S. Communities

#### 1.0 Service Overview.

The Totally Web Government (TWG) Service is a comprehensive set of resources aimed at providing small and medium local government entities (hereinafter "LGE") with the ability to develop and maintain an interactive web presence. This SOW provides the service that enables connectivity to the Internet in order to take advantage of the interactive web presence. Connectivity is provided via a Hughes Network Systems DIRECWAY DW4000 satellite dish that communicates with a geostationary satellite in a "two-way" manner; i.e. the receive (or downstream) data and the transmit (or upstream) data signals both operate through the system's antenna, over the satellite, and via a Network Operations Center. Hughes is a subcontractor to IBM for this service under Totally Web Government.

The tasks associated with the Broadband Satellite Connectivity Service include the following, which are described in detail within this SOW.

1. Hardware/Software Delivery and Installation
2. Help Desk Functions
3. Registration, Invoicing, and Reporting

#### 2.2 Service Capability.

Three different levels of service are available to meet LGE requirements under this SOW. These levels (Basic, Plus, and Premium) are identified in the table below. Each level is priced differently, with prices listed in Attachment B. Additionally, there are three optional features that can be purchased with the Broadband Satellite Connectivity Service. The table below identifies the capabilities and features of this Service. All features identified as "optional" are available at a separate price identified in Attachment B.

| Services   | BASIC           | PLUS            | PREMIUM         |
|--|-----------------|-----------------|-----------------|
| Internet Access  | 24 Hours a Day  | 24 Hours a Day  | 24 Hours a Day  |
| ISP Service  | Included        | Included        | Included        |
| Online Time (TI and ISP)                                 | Unlimited Hours | Unlimited Hours | Unlimited Hours |
| Maximum number of TCP connections (1)                    | 30              | 45              | 80              |
| Typical number of Concurrent Users                       | 2               | 5               | 20              |
| E-Mail Accounts (includes 10MB storage for each account) | 4               | 8               | 12              |
| Number of mobile Dial-up Accounts Included               | 0               | 1               | 5               |
| Additional dial up accounts                              | Optional        | Optional        | Optional        |
| Additional E-Mail Accounts                               | Optional        | Optional        | Optional        |
| Routable static IP address                               | Optional        | Optional        | Optional        |

(1) Maximum number of TCP connections -- Total number of concurrent sessions available.

#### 1.2 Warranty.

DIRECWAY hardware & software products are warranted by Hughes Network Systems to be free from defects for one year from date of installation. While installation services are warranted by Hughes Network Systems for a ninety (90) day period from date of installation. In the event there is a deficiency during either warranty period requiring a licensed maintenance technician to respond to the customer location, Hughes Network Systems will coordinate a date with the customer where a maintenance technician can be on site.

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A separate maintenance plan is available as an optional service that provides for the maintenance technician to be on site within 24 hours to correct deficiencies. Purchase of this optional maintenance plan will ensure that a maintenance technician will respond within 24 hours to correct the deficiency. This separate maintenance plan can continue after the standard warranties have expired and will provide the customer with on-site response within 24 hours to correct deficiencies at no cost for hardware, software, or labor.

**1.3 Key Assumptions**

Notwithstanding any other provision of the Agreement, the following are basic assumptions of this SOW.

- a. LGE will purchase the hardware and software required to use this Service and subscribe to transmission capacity on a monthly or per event basis.
- b. Any legislative, privacy, security or other policy or legal barriers that might prevent the use or funding of electronic service delivery channels for LGE transactions as described herein will be appropriately addressed by the LGE to remove the barrier, so that implementation can proceed.
- c. The LGE will provide its assurance that the use of the Broadband Satellite capability complies with legal and ethical requirements and that IBM will not be in violation of any laws or ethical guidelines by complying with its contractual commitments herein.
- d. Any legacy host modifications required to effect the real-time completion of transactions will be the responsibility of the LGE or will be contracted to IBM on a fee for service basis.
- e. As with any shared-resource Internet service – including cable and DSL – there are times during the day when network peak loading may impact service response time.
- f. The LGE will assign a Project Coordinator to be the single point of contact with IBM. This individual shall have decision making authority on behalf of the LGE and be responsible for coordinating and monitoring installations with IBM.

**2.0 Description of Services**

**2.1 Hardware/Software Delivery and Installation**

Due to the fact a transmitter is an integral part of the system, the Federal Communications Commission (FCC) requires that a licensed installer complete the installation. Team IBM will provide a licensed installer to install the DW4000 system as part of this service at no additional cost.

The DW4000 configuration requires that the County use a Pentium® class PC with available USB port running Windows 98 SE, Windows ME, or Windows 2000. Complete LGE hardware/software specifications are provided in Attachment A. The hardware/software that will be provided by IBM as part of this Service includes:

- a. One (1) DW4000 Antenna (with dual DW4000 LNBs for both Receive and Transmit)
- b. One (1) DW4000 IRU External Satellite USB Modem
- c. One (1) DW4000 ITU External Satellite USB Modem
- d. One (1) DW4000 Outdoor Radio Transmitter
- e. One (1) CD Containing DW4000 2-Seat Business Edition Software (Model Number DPC4BE-CD)
- f. One (1) User Manual
- g. One (1) Universal Mount



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IBM will perform the following activities associated with this task.

- a. Deliver the hardware identified above to the LGE. Delivery will include the unpacking and inspection of the equipment by IBM in the presence of LGE personnel to verify that the equipment has arrived in an undamaged condition.
- b. Install the hardware at the LGE facility. This will include the following activities:
  1. Identify the most advantageous location to mount the outdoor equipment on the facility and obtain LGE agreement as to the final mounting location
  2. Mount the outdoor equipment securely to the facility at the agreed upon location
  3. Install/place the indoor equipment at the most advantageous location agreed upon by IBM and the LGE representative
  4. Install cable from the satellite dish to LGE PC/LAN. The cable will need to penetrate an exterior wall. The installation team will install an interior wall jack to connect to the cable and PC/LAN
  5. Test the indoor and outdoor equipment to ensure that it functions as specified, providing access to the Internet. When possible, the test will be conducted using LGE's PC and the LGE will send an e-mail to the IBM Totally Web Government Project Office to confirm successful implementation.
  6. The cable run should not exceed 150 feet in length from the satellite antenna to the LGE PC. Cable runs in excess of 150 feet will be considered a non-standard installation

Non-standard installations may require a site survey prior to installation. Non-standard installations are considered an installation with a cable run in excess of 150 feet as described above, the requirement for additional cable drops, historic sites and installation sites that are typically high-rise buildings located in cities such as New York, Chicago, San Francisco, etc. If required, installation quotes can be done on a site-by-site basis through a site survey. The site survey charges will be included in the Non-Standard Installation charge if the LGE proceeds with the installation. Site Survey charges are identified in Attachment B.

## **2.2 Help Desk.**

LGEs experiencing a problem will submit an on-line problem report. The problem report form can be accessed through the TWG web site at [www.totalwebgov.com](http://www.totalwebgov.com). Select the "Support" function, fill in the information requested, and click on "Submit." In the event the LGE has lost connectivity, IBM will provide the LGE during installation of the hardware, the telephone number to an IBM Help Desk. IBM Help Desk support will be available Monday through Friday, 8:00am to 5:00pm Central Time with the exception of federal holidays. All telephone requests will be required to be followed up with an on-line problem report form within one business day after restoration of connectivity.

The Help Desk support to be provided by IBM includes the following:

- a. Receive initial reports/calls from Content Administrators.
- b. Open a Call Record for each call. The call will be assigned a Call Record number. All subsequent communications regarding the initial call will need to reference the Call Number. IBM will document the problem and actions taken on a problem on the call record until the problem is resolved and retain those records for a period of one (1) year.
- c. Perform analysis of the problem in an attempt to identify the cause and a solution.



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- d. Implement a solution to the problem or work around if necessary and available.
- e. Contact other support groups or organizations, as required, and coordinate work to promptly, diligently, and efficiently resolve the problem with a minimum of disruption or interruption of services.

The IBM Help Desk will respond to problems in accordance with the severity code assigned to the problem by the IBM Help Desk and escalate problems as appropriate. The severity codes and associated service level objective (SLO) are as follows:

- a. Severity 1 – Major impact. The service is not usable. It is IBM's SLO that severity 1 problems are responded to and corrected within two (2) hours or escalated as appropriate.
- b. Severity 2 – Significant impact. Important function is not available. It is IBM's SLO that severity 2 problems are responded to and corrected within four (4) hours or escalated as appropriate.
- c. Severity 3 – minor impact. The service is not seriously affected. It is IBM's SLO that severity 3 problems are responded to and corrected within one (1) business day or escalated as appropriate.
- d. Severity 4 – no impact. Short coming, dissatisfaction, or question. It is IBM's SLO that severity 4 problems are responded to within two (2) business days

The IBM Help Desk call records will reflect the date and time the IBM Help Desk received notification from LGE of a problem, the date and time at which IBM initially responded back to the LGE regarding the problem, and will be the only source for measuring service response time.

In the event that it is identified that a specific piece of hardware needs to be returned for a replacement that can be installed by LGE personnel such, as a modem, LGE will be provided with a shipping location by the Help Desk personnel.

**2.3 Registration and Invoicing.** IBM will provide registration and invoicing for LGEs that sign up for this Service. The procedures to be followed for registration and invoicing are described below.

**2.3.1 Registration.** The following will occur for registration:

- a. An LGE requesting this Service will contact the IBM Totally Web Government Program Office either via completing a registration form on the TWG web site ([www.totalwcbgov.com](http://www.totalwcbgov.com)) or by calling the TWG Help Desk and requesting services be initiated. The LGE will need to provide the information below:
  - 1. the LGE and State name;
  - 2. the Content Administrator's name;
  - 3. Internet address, if available;
  - 4. mailing address;
  - 5. installation location if different from mailing address
  - 6. telephone number; and
  - 7. effective date LGE would like service to begin.
- b. IBM will, within one business day, provide a tentative installation date for the LGE. IBM will make every effort to provide installation within 30 days of the installation request.

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**2.3.2 Invoicing.** IBM will provide to the LGE a monthly invoice. Each invoice will include as a minimum a listing of each service the LGE is receiving, the effective date of service, the amount being invoiced, and payment mailing instructions.

**2.3.3 Reporting.** IBM will provide reporting to the LGE on a monthly basis. The report will be provided in an electronic format to the LGE Content Administrator. The report will include, as a minimum, an accounting for any system down time that occurred during the previous month, a summary of significant or continually repeated Help Desk call records and the actions taken to correct the problem, and responses to questions most frequently asked of the Help Desk.

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**ATTACHMENT A**

**LGE Hardware/Software Specifications**

The DW4000 system connects to a user-provided Personal Computer that meets the following requirements:

|                        |   |
|------------------------|---|
| Processor:             | 333 MHz Pentium II class or better                        |
| Interface:             | One available USB port                                    |
| Operating Systems:     | Windows 98 SE, Windows ME, or Windows 2000                |
| Memory:                | 64 MB RAM (Win 98 SE and Win ME) or 128 MB RAM (Win 2000) |
| Free Hard Disk Space:  | 20 MB   |
| Display:               | PCI or AGP video adapter, 800 x 600 minimum               |
| Browsers:              | Internet Explorer 5.0 and higher NetSACpe Navigator 4.76  |
| Internet Applications: | All common TCP/IP applications                            |
| Interface:             | USB 1.1 or higher   |



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**ATTACHMENT B**

**Pricing and Payments**

**1.0 Pricing and Payments.** The LGE agrees to pay IBM the charges specified herein.

**2.0 Services Implementation Charge.** The LGE will pay IBM a one-time subscription fee and a monthly user fee for the Broadband Satellite Connectivity Service functionality selected as set forth in table A-1 below. The Monthly Services Charge will be prorated for any partial month.

| Services   | BASIC                     | PLUS                      | PREMIUM                   |
|--|---------------------------|---------------------------|---------------------------|
| One Time Subscription Fee  | \$1,250                   | \$1,650                   | \$2,000                   |
| Monthly User Fee   | \$99<br>Monthly           | \$215<br>Monthly          | \$540<br>Monthly          |
| Monthly Maintenance Plan – (24 hour response Optional)                 | \$35<br>Monthly           | \$35<br>Monthly           | \$35<br>Monthly           |
| Additional Mobile dial up accounts – (Optional)                        | \$15.20<br>Monthly        | \$15.20<br>Monthly        | \$15.20<br>Monthly        |
| Additional E-Mail Accounts – (Optional)<br>(10MB storage each account) | \$2.00<br>Monthly<br>each | \$2.00<br>Monthly<br>each | \$2.00<br>Monthly<br>each |
| Routable static IP address – (Optional)                                | \$15.20<br>Monthly        | \$15.20<br>Monthly        | \$15.20<br>Monthly        |
| Site Survey – (Optional)   | \$400                     | \$400                     | \$400                     |

Table A-1

**3.0 Site Survey Charge.** In the event that a site survey is requested/required, the LGE will not be charged with a site survey fee if they proceed with the installation. Should the LGE decide not to proceed with the installation once the Site Survey is complete, the LGE will be charged \$400 for the site survey.

**4.0 Installation Charge.** In the event that the IBM Installation Team visits the LGE for a mutually agreed to site survey or installation and the LGE personnel are not present or otherwise not ready for the installation, the LGE will be charged \$100 for each instance, regardless of whether the LGE acquires Service or not.

**5.0 Termination Charge.** Should an LGE decide to terminate Service within the first year, there will be a termination charge of \$199 assessed.

**6.0 Financial Assumptions**

- a. All charges are in United States dollars.
- b. Billing will begin on the day that the Broadband Satellite Connectivity system is activated at the County location.
- c. All periodic charges will be computed on a calendar month basis and will be prorated for any partial month, unless this Agreement expressly states otherwise.
- d. LGE is responsible for any surcharges and fees imposed by any government, including those that are passed through to IBM by its Subcontractors, for Services IBM provides.
- e. LGE is responsible for any applicable federal, state, and local taxes unless the LGE provides an exemption for such taxes.